IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
FRIDAY, THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19096 of 1997

Between:

B.Appa Rao son of Late Bangarayya
H.No. 4/23,Harijan Colony, Gopalapatnam Post Visakapathnam

..... PETITIONER

AND

1 The Industrial Tribunal -cum -Labour Court
Visakhapatnam
2 The Director M/s Inspection& Testing Co,, (India)
Private Limited, Akbar Mansion P-1, Hinde Lane, Calcutta.
3 The Brach Manager
M/s Inspector &Testing Co. (India) private Limited.
D.No. 24-1-25, Visakapatnam

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, or order or direction more particularly one in the nature of Writ of Certiorari Calling for all the connected records including the award passed by the 1st respondent in I.D.No.252/93, dated. 27/03/1997 and the impugned termination order dt. 1/11/93 and quash the same as illegal, improper, unjust, contrary to law and against the principles of natural justice and sec. 25-F of I.D.Act 1947 and further direct the 3rd respondent to reinstate the petitioner into service with full back wages, continuity of service and other attendant benefits

Counsel for the Petitioner : MR.K.G.KRISHNA MURTHY

Counsel for the Respondents: MR.T.S.ANAND

The Court Made the Following :

ORAL ORDER :

The petitioner seeks a Writ of Certiorari calling for the records

relating to the Award dated 27-03-1997 in I.D.No.252 of 1993 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam and to quash the same being arbitrary, illegal and contrary to the principles of natural justice.

The petitioner was appointed as a Peon in M/s. Inspection & Testing Company, a Private Limited Company in the year 1986. By order dated 01-11-1993, his services were terminated. Aggrieved by the same, the petitioner raised an industrial dispute which was registered as I.D.No.252 of 1993 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Labour Court having considered the material on record, by Award dated 27-03-1997 though found that the termination was illegal, held that since the removal of the petitioner was on account of want of sufficient work reinstatement cannot be ordered, but he should be adequately compensated by payment of compensation. Accordingly, the management was directed to pay a compensation of Rs.10,000/- to the petitioner workman within two months, failing which it shall carry interest at the rate of 15% per annum.

This Writ Petition is filed by the petitioner assailing the said award. The contention of the petitioner is that having held that the termination was illegal, the Labour Court ought to have directed reinstatement into service with all attendant benefits.

I have heard the learned Counsel for the petitioner as well as the learned Counsel for the respondents 2 and 3 (Management) and perused the material on record.

The letter of termination dated 01-11-1993 which was marked as Ex.W-2 before the Labour Court runs as under :

"November 01, 1993.

Shri Bora Appa Rao,
C/o. Shri B. Bangarayya,
Harijana Colony,
D/No. 4/23,
P.O. Gopalapatnam,
VISAKHAPATNAM – 530 023.

Dear Sir,

You have been very irregular in attending Office and on several occasions in the past you were absent even without prior intimation or obtaining necessary permission . Several times you were warned and charge memos were also issued earlier. Very often you were absenting from duty and at times you are submitting Medical Certificates to the effect that you are sick. It is clear from your record that you are very frequently absenting from duty and on many occasions you did not even obtain permission.

Further, the Company feels that your services are no longer required and the post of Office Peon itself is not necessary as there are only two Employees at Visakhapatnam Branch.

As per your Letter of Appointment dated March 01, 1986, your employment is terminable by giving one month's notice from either side. Please therefore treat this notice as one month's notice and be informed that your services stand terminated on and from December 01, 1993.

Yours faithfully,
INSPECTION & TESTING CO.(INDIA) PRIVATE LTD

Sd/-xxxxx
DIRECTOR."

As can be seen, the case of the management was that the petitioner was removed for want of work and as per the terms of the appointment he was given one month notice under Ex.W-2 and he was also paid one month salary under Ex.W-5 Cheque in lieu of one month notice. M.W.1 who deposed on behalf of the Management stated that the termination was only for want of work as the work-load was completely reduced in the local office and that they had already closed the Karnataka Branch and Calcutta Dock Office. It was also stated that by the date of the impugned termination, only two clerks were working and in the place of the petitioner they did not appoint anybodyelse as there was no work. The said fact has also been admitted by the petitioner. However, the petitioner alleged that the impugned termination was only on the ground of alleged unauthorised absence. Since admittedly no enquiry was conducted with regard to the alleged unauthorised absence, according to the petitioner, the order of termination is illegal

and liable to be set aside.

The learned Counsel for the petitioner placed much reliance upon the recitals in Ex.W-2 letter of termination and contended that the termination was only on the ground of the alleged unauthorized absence and not on the ground of want of sufficient work.

It is true that in the letter of termination, it was stated that the petitioner was irregular in attending the office and that his record shows that he was very frequently absenting from duty and on many occasions he did not even obtain the permission. However in the said letter, it was also mentioned that his services were no longer required since the post of office peon itself was not necessary as there were only two employees at Visakhapatnam branch. The fact that there was no sufficient work-load at Visakhapatnam branch where the petitioner was working was not in dispute and as a matter of fact the petitioner in his deposition as W.W.1 admitted the same. The Labour Court, on appreciation of the entire evidence on record both oral and documentary, found that though unauthorized absence was mentioned in the letter of termination, the petitioner was retrenched from service only on the ground of want of sufficient work as deposed by M.W.1. No other material is placed before this Court to take a different opinion and to hold that the finding recorded by the Labour Court is incorrect. Hence, it cannot be held that the termination is illegal on the ground that enquiry was conducted in the allegation of unauthorized absence.

However, the law is well settled that even where the services were terminated for want of sufficient work, the same shall be in compliance with the requirements of Section 25-F of the Industrial Disputes Act (for short, 'the Act') which provides for not only one month's notice in writing, but also payment of retrenchment compensation. Payment of retrenchment compensation is also mandatory under Section 47(1) of the A.P. Shops & Establishments Act, 1988. Having recorded a finding that no such compensation was paid,

the Labour Court has rightly held that the termination was illegal. However, having regard to the fact that the termination itself was on the ground of want of sufficient work, instead of directing reinstatement, the Labour Court held that it would be just and reasonable to award compensation and accordingly directed payment of compensation of Rs.10,000/-.

The learned Counsel for the petitioner while placing reliance upon the decisions of the Supreme Court in *GAMMON INDIA LIMITED v. NIRANJAN DASS*[1] and *NAROTAM CHOPRA v. PRESIDING OFFICER, LABOUR COURT*[2] vehemently contended that since the termination of petitioner's service was found to be illegal for non-compliance of the statutory requirements, the order of termination is rendered *ab initio void* and the petitioner shall be entitled to reinstatement with full back-wages. There can be no dispute about the ratio laid down in the above cases. However, it has never been held by the Courts that even where the Labour Court finds that the retrenchment was bona fide and there was need for such retrenchment, reinstatement shall be ordered in all cases of non-compliance of the provisions of Section 25-F of the Act.

Normally, when once the retrenchment was declared as illegal and unjustified, it shall be deemed that there is no termination of relationship of employer and employee and therefore the employee shall be entitled to reinstatement as well as full back-wages. But where the retrenchment itself was found to be an inevitable consequence and it was also found that the management in retrenching the services of workman acted *bona fide*, it cannot be said that the Court has no discretion to pass appropriate consequential orders in lieu of reinstatement.

In this context, it would be appropriate to refer to the following observations made by the Supreme Court in S.K. VERMA v.

INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI[3].

> "… … … Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been and so it must ordinarily lead to back-wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and workmen to direct reinstatement with full back-wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The Court may deny the relief of award of full back-wages where that would place an impossible burden on the employer. In such and other exceptional cases the Court may mould the relief but, ordinarily the relief to be awarded must be reinstatement with full back-wages. … …. …."

In the case on hand, as already held the impugned retrenchment is not punitive in nature, but only on the ground of want of sufficient work. Nothing has been placed before this Court to show that the action of the Management in terminating the services was not bona fide. Admittedly, there was no sufficient work and therefore the reinstatement of the petitioner into service was not possible. In the circumstances, though there was non-compliance of the statutory requirements, the Labour Court in its discretion thought it fit to award compensation in lieu of reinstatement. Having regard to the facts and circumstances of the case, I do not find any justifiable reason to hold that the said discretion exercised by the Labour Court is either arbitrary or illegal.

I am also unable to hold that the quantum of compensation awarded by the Labour Court is inadequate. As can be seen the total length of service put in by the petitioner was about 7 years and his last drawn salary was Rs.1,050/- per month. Therefore, even as per Section

25-F(2) of the Act he is entitled to receive about Rs.3,500/- towards retrenchment compensation. In the circumstances, the sum of Rs.10,000/- awarded by the Labour Court as compensation in lieu of reinstatement is just and reasonable.

For the aforesaid reasons, I do not find any infirmity in the impugned Award and the interference of this Court is not warranted.

Accordingly, the Writ Petition is dismissed. No costs.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Industrial Tribunal -cum -Labour Court
Visakapathnam
2 The Director M/s Inspection& Testing Co,, (India)
Private Limited, Akbar Mansion P-1, Hinde Lane, Calcutta.
3 The Brach Manager
M/s Inspector &Testing Co. (India) private Limited.
D.No. 24-1-25, Visakapatnam
4.2CD copies.

-
-

---

[1] (1984)1 SCC 509
[2] 1989 Supp (2) SCC 97
[3] AIR 1981 SC 422